IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE
WRIT PETITION NO.4495 of 2003

Shri Ravindra Anandrao Pawar...Petitioner
Versus
1. The Government of Maharashtra)
2.The Registrar, High Court,)
Appellate Side, Mumbai.)..Respondents

Mr. S.S.Pakale, for the Petitioner
Mr. S.R. Nargolkar, A.G.P. for Respondents

Mr.S.S.Pakale,for the Petitioner

Mr.S.R.Nargolkar,A.G.P.for Respondent.

CORAM : F.I. REBELLO & S.P. KUKDAY,JJ.

DATED : 1st February, 2005

ORAL ORDER:

. The petitioner was employed as Judicial Officer in the Maharashtra Judicial Services. Pursuant to an enquiry conducted he came to be dismissed from service. The present petition is to challenge the said order of dismissal.

2. At the hearing of this petition, on behalf of the petitioner learned Counsel has raised only the following ground. It is his contention that before punishment of dismissal was imposed on him he ought to have been given personal hearing as requested by him by the Disciplinary Authority. That having not been given, it is submitted, would result in denial of a fair hearing and in that context the punishment imposed ought to be set aside. Learned Counsel in support of his contention relies on a judgment of the Full Bench of this Court in the case of **Anil Amrut Atre vs. District & Sessions Judge, Aurangabad & Anr. 2002 (3) Mh.L.J.750**. In that case the issue before the learned Full Bench was in the matter arising from an Appeal. The issue

was whether the Appellant therein who had sought a hearing before the Appellate Authority in the Appeal preferred by him should be given a personal hearing. It was this issue amongst some other challenges which were in issue before the learned Full Bench. On consideration of the relevant rule the learned Full Bench held that the delinquent employee who had preferred an appeal ought to be given a personal hearing. In the instant case we are not concerned with the right of hearing in an Appeal. The submission is that before the order is passed of punishment by the Disciplinary authority the delinquent employee if he has sought a personal hearing must be personally heard. The relevant rule with which we are concerned is Rule 9(4) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979, which reads as under:-

> 9(4). If the disciplinary authority, having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry, is of the opinion that any of the penalties specified in clauses (v) to (ix) of sub-rule (1) of rule 5, should be imposed on the Government servant, it shall make an order imposing such penalty and it shall not be necessary to give the Government servant any opportunity of making representation on the penalty proposed to be imposed;
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> Provided that, in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the disciplinary authority to

the Commission for its advice, and shall advice shall be taken into consideration before making an order imposing any such penalty on the Government servant."

2. It will be, therefore, clear that the Rule itself does not provide for a provision for granting a hearing to a delinquent employee at the stage of disciplinary proceedings. The law is now well settled as to the requirement of an opportunity to the Government employee (See **Union of India vs. Tulsiram Patel & Ors..AIR 1985 SC 1416).** The limited departure since then is that as a requirement of fair hearing under Article 311 of the Constitution the delinquent employee must also be given a copy of the enquiry report before the Disciplinary Authority imposes the punishment of dismissal. In the instant case that has been complied with.

3. In **J.A. Naiksatam vs. Prothonotary & Senior Master, High Court of Bombay & Ors.,Civil Appeal No.4395 of 2002** along with other Appeals which were decided on 7th October, 2004 the Apex Court was considering Rule 8 of the Bombay High Court (Discipline and Appeal) Rules. Those Rules pertained to employees employed in the High Court of Bombay. A similar contention as now advanced was raised on behalf of the Appellant. It was submitted that as there is no express exclusion of requirement of hearing must be read into the Rules. After considering the Rule and the contentions advanced the Apex Court observed as under:- "It was also argued that the Appellants should have been heard by the disciplinary authority before such a decision was rendered.

Even though the rule as such does not contemplate of giving an opportunity of being given to the delinquent appellants before the disciplinary authority takes a final decision to disagree with the reasons given by the enquiry officer, such a provision could be read into the rule but even then the appellants cannot be heard to say that there should be a personal hearing by the disciplinary authority. In the instant case, the appellants were given a copy of the tentative decision of the disciplinary authority and the appellants furnished detailed explanation and we are of the view that the principles of natural justice have been fully complied with and we do not find any infraction of rules or infirmity in the said decision."

4. It is now well settled that requirement of personal hearing cannot be read into a Rule if it is not so provided for. Apart from that what is contemplated is that a fair opportunity must be given. A fair opportunity can include representation on behalf of the delinquent employee. In the instant case the report of the enquiry officer was made available to the delinquent employee. He made his representation against the proposed punishment. That was considered. In other words there was a full compliance of the requirement of opportunity.

5. That being the case we are satisfied that there being no infraction of the principles of natural justice or violation of Article 311 or for that matter Article 14 of the Constitution of India. Writ Petition rejected.

(F.I. REBELLO, J.)

(S.P. KUKDAY, J.)